

Minutes
Special Meeting of the City Council/Redevelopment Agency
City of Huntington Beach

Tuesday, February 3, 2009
5:30 PM - Council Chambers
Civic Center, 2000 Main Street
Huntington Beach, California 92648

**A video recording of the 5:30 PM portion of this meeting
is on file in the Office of the City Clerk and is archived at
www.surfcity-hb.org/government/agendas/**

CALL TO ORDER

Mayor Bohr called the special meeting of the City Council/Redevelopment Agency to order at 5:32 PM.

ROLL CALL

Present: Carchio, Dwyer, Green, Bohr, Coerper, Hardy (arrived at 6:15 PM), and Hansen
Absent: None

ANNOUNCEMENT OF LATE COMMUNICATION

Pursuant to the Brown "Open Meeting" Act, City Clerk Joan Flynn announced three PowerPoint communications dated February 3, 2009 entitled, "Inclusionary Housing Ordinance: Proposed Changes;" "Inclusionary Housing: Changes to Policies and Procedures;" and, "Inclusionary Housing Program: Cape Ann Issues."

COMMUNICATIONS RECEIVED DURING THE MEETING

Communication submitted by George Mitchell, dated February 2, 2009 and entitled, "Information on basis Cape Ann homes were originally sold."

Communication submitted by Margaret Van Herk, undated and entitled, "Typical Cape Ann Buyer."

Communication submitted without name disclosure, title or date regarding Cape Ann upgrades, refinancing, resale and formula.

Communication submitted by Susan Gottfried and group of Cape Ann homeowners, dated February 3, 2009, entitled, "Comments of Existing Cape Ann Owners on Proposed Changes to the Affordable Housing Program."

PowerPoint presentation submitted by Carol Martin dated Feb. 3, 2009 entitled "Affordable Housing Program Brisas del Mar Issues."

PLEDGE OF ALLEGIANCE - Led by Councilmember Coerper

Mayor Bohr polled the audience to see if the public preferred to provide comments before or after the staff presentation. The audience reached a consensus to provide comments following the staff presentation.

(City Council) Reviewed and discussed proposed modifications to the Inclusionary/Affordable Housing Program.

Stanley Smalewitz, Director of Economic Development introduced Kathy Head, Consultant, Keyser Marston & Associates, who provided three separate PowerPoint presentations. The first presentation entitled, "Inclusionary Housing Ordinance: Proposed Changes," included current requirement and proposed change for housing in Redevelopment Project Areas, current requirement and proposed change for off-site production of affordable housing, current requirement and proposed change for in-lieu fee payments, current requirement and proposed change for income and affordability standards, executed income and affordability covenants, future income and affordability covenants, and other proposed changes that impact developers, including a 1-year pilot program (in-lieu fees paid at project completion, units provided proportionately throughout the market rate mix, designated staff can make minor modifications to the mix).

The second presentation entitled, "Inclusionary Housing: Changes for Policies & Procedures," included goals for program modifications (clarify requirements, simplify the process, modify terms to reflect current conditions), current requirement and proposed change for household income measurement, current requirement and proposed change to interest rate used in affordable housing cost calculations, other proposed changes that will impact home buyers, i.e., posting affordable sales prices quarterly on the website, posting utility allowances on the website, purchase of durable goods, and supplying each buyer with a copy of the policies and procedures manual. The next slides addressed current requirement and proposed change for owner occupancy requirements (hardship provision added), current requirement and proposed change for refinancing restrictions, current requirement and proposed change for inheritance, proposed new monitoring and enforcement documents, and proposed new enforcement measures.

Councilmember Hansen, Consultant Head and Director Smalewitz discussed establishing a rolling interest rate that would be advertised on a month-to-month basis, and the need to establish a lock-in date.

Councilmember Green and Consultant Head discussed what determines a rental price at the covenant level. Consultant Head explained the formula for a moderate income level, and the difference between establishing an affordable rent and affordable mortgage (30% of 110% of the median level for rent; 35% of 110% for ownership). Discussion ensued regarding how hardship can affect the affordable rent rate, how it runs parallel to unrestricted markets, and how the real estate market does not offer guarantees.

The third presentation entitled, "Inclusionary Housing Program: Cape Ann Issues," included issues and responses related to the resale pricing formula, median income determination, historical Housing and Community Development (HCD) median income (4-person household) and upgrades.

Councilmember Carchio questioned if incentives were offered in the original package. Staff responded, "No."

The presentation continued with resale price transparency, floor and comparison, other issues (qualification criteria), recognizing family trusts, flexibility to rent a unit, and covenant periods commencing at Certificate of Occupancy.

PUBLIC COMMENTS PERTAINING TO SPECIAL MEETING ITEM(S) (3 Minute Time Limit)

Suzette Clark, Cape Ann resident, provided a PowerPoint presentation entitled, "Comments of Existing Cape Ann Owners on Proposed Changes to the Affordable Housing Program." She explained that a number of Cape Ann homeowners would participate in the presentation by discussing key "points" of information. She opened by providing a brief history of action related to reform provisions and discussed Point 1 that addressed Regional Housing Needs Assessment (RHNA); and, Point 2, indicating State law allows flexibility in resale formulas.

Steve Fought, Cape Ann resident, continued with the PowerPoint and discussed Point 3 which objects to the City suggesting that the low real estate market has bearing on the restricted resale price for affordable housing; Point 4, requesting that the City correct inconsistent, published affordability periods that do not reflect the term of 1999-2029 identified within the Cape Ann CC&Rs for all homes; and, Point 5 that permits current owners to recover costs of improvements or repairs.

Marlon Steiner, Cape Ann resident, continued with the PowerPoint and discussed Point 6 relating to real estate agent costs and maintaining a list of eligible (and pre-qualified) buyers; and, Point 7 that proposes other formula fixes related to utility factor, mortgage interest rate, resale, home equity and refinancing.

Renata Green-Gaber, Cape Ann resident, continued with the PowerPoint and discussed Point 9 relating to rental permission and the City's ability to achieve affordable housing goals through rentals (ownership is not required); and, Point 10 that calls for adequate disclosure, education or protections against program changes.

Susan Gottfried, Cape Ann resident, voiced concerns relating to refinancing when a homeowner is penalized for extracting home equity for emergencies, and the risks in losing a large down payment. She also discussed the difficulties in selling the property (even with upgrades), unrealistic buyer restrictions, how utility fees impact the selling price, and a perceived unfair resale formula.

Gabe Houston, Attorney (not representing anyone in current litigation, nor a litigant himself), voiced concerns for how standards have changed since he purchased his home in 2003, stating his opinion that what was contracted in 2003 should still apply. He discussed buyer loan limitations that restrict potential, qualified buyers. He expressed concerns about the City making changes without disclosing information to homeowners. He also questioned why different premiums between models are not currently being sustained.

Brian Bayer, Brisas del Mar resident, informed Council that the real estate agent who sold him his condominium failed to disclose that the property was affordable with applied restrictions, stating discovery occurred after he moved in. He requested that the City pre-qualify buyers to

assist property owners who wish to sell their property, expressing disappointment with not being able to purchase a second home because of the difficulties in selling his affordable unit.

Denise Winn, Brisas del Mar resident, discussed past actions that caused errors in the recording of property, and voiced concerns related to inconsistent affordability expiration periods published for different units. She stated that the correct Brisas Del Mar affordability period sunsets in 2024. She concluded comments by describing her surprise when the City approached her about her affordable unit long after her purchase in 1999.

Linda La Pointe, Brisas del Mar resident, discussed how she purchased her unit in December 1993 by auction, was prequalified through an outside lender, and was never informed of the property's affordability status. She explained how a neighbor notified her approximately five years ago that her unit was affordable, and stated that her contract indicated a lined-out area for Exhibit B, the affordable covenant. She discussed her investments on the interior of her home, and expressed fear of risk for future plans and retirement.

Hannelore Palmer, Cape Ann resident, expressed concerns related to information on RHNA guidelines provided at the January 20, 2009 study session, and her perceived lack of property rights given her \$62,000 down payment and paying two association fees and a monthly mortgage. She discussed her inability to rent the property, draw equity, or sell it, and expressed disappointment that one property in Cape Ann went into foreclosure. She concluded by stating that she was informed of the affordable housing restrictions four years after she purchased her home, and her opinion that affordable ownership generates no security or happiness.

Shon Lee, Brisas del Mar resident, purchased a unit in 1999 at full market rate without assistance from any City program, but indicated that he didn't receive City notification about the unit's affordable status until seven years later. He stated that owners should not be forced to comply with restrictions that were never communicated to them at the time of purchase.

Kathleen Peerenboom, Brisas del Mar resident, discussed events behind the purchase and sale of her unit and how she was not made aware of the unit's affordability status until years later when the City filed suit against certain Brisas del Mar residents. She described receiving a clear title check and confirmation from the City years ago that the property was not affordable. She also discussed units being sold at auction, and neighbors upgrading units and asking the City to adjust income levels from low to moderate. She stated that she is interested in rental capabilities, and requested that Council meet with residents.

Mostafa Bayati, Cape Ann resident, purchased property in 1999 and discussed how agents failed to disclose information relating to resale restrictions, and discussed the paper he signed stating that restrictions would be recorded later. He requested that the Council eliminate the program and let the property owners out of future obligations. He also disputed Councilmember Hansen's comments related to buying a discounted unit, and stated his opinion that some owners' would be willing to pay their way out of the program.

Councilmember Hardy confirmed Mr. Bayati's escrow closed during Phase I.

Carol Martin, Brisas del Mar resident, discussed purchasing a condo ten years ago at market value, and how the buyer application contained no information related to the property's affordability status. She presented a PowerPoint that addressed covenant inconsistencies at the Brisas del Mar development.

Karen Jackle, Cape Ann resident and business owner, expressed disappointment with meeting materials not being available to the public until the day of the meeting. She addressed post purchase changes to the inclusionary ordinance, voicing concerns related to moderate income restrictions, replacement housing and transportation.

Mark Ortiz, Cape Ann resident, voiced concerns about how buyers were misled by agents who offered no true disclosure of the City's affordability program, and how the builders pushed for the use of onsite lenders. He expressed disappointment that current owners are being represented as affordable numbers for the City, and requested that Council consider some of the recommendations presented by the community that would bring change to the program and benefit homeowners. He concluded by chastising what he referred to as unscrupulous tactics used by John Laing Homes.

Margaret Van Herk, Realtor, provided a realtors' perspective and voiced concerns about price adjustments during the past three months. She presented overhead slides that provided three scenarios of a typical Cape Ann buyer that would not meet the buyer qualifications established by the City, followed by a matrix that listed unreachable qualifications for buyers. She stated her opinion that the program does not work and how there are sellers willing to sell at the City-established price, and buyers willing to purchase at that price, but they cannot be put together.

Councilmember Hardy questioned fluctuation of prices and whether the seller has the option to lock in a price at the original or refigured rate. Staff confirmed sellers' options, and Councilmember Hardy recommended that the option be identified in educational materials.

Annelle Musso, Cape Ann resident, indicated that the only program information she received was provided by John Laing Homes, without any education from City representatives on program restrictions. She discussed submitting a \$60,000 down payment, paying property taxes, and how the development was advertised as new homes, not condominiums. She also noted discrepancies between what model units and units with upgrades sold for, and addressed development phases increasing by tens of thousands of dollars and increased interest rates, urging Council to eliminate program restrictions from original Cape Ann owners.

Rick Espinosa, President of the Promenade Home Owners' Association, voiced disappointment with comments alluding to property owners' knowledge of the restrictions and guidelines of the Inclusionary Housing Program. He discussed how interest rates in 2001 assisted in his decision to buy a unit in the Promenade development, addressed non-disclosure of program revisions made in 2004, his attempts to investigate percentages and savings using information by his real estate agent. He concluded by asking Council how he should explain all of this to a prospective buyer.

Patrick Gordon, Grey Stone Keys homeowner, understood that his affordable covenant would expire in 30 years. He also indicated his understanding that the government can't pass regulations and enforce them ex post facto (after the fact). He described being unaware of the restrictions related to property inheritance, and his perception that he fell into a flawed program. He stated his appreciation for what the community has to offer, suggesting that the Council create community, and encourage people to come into the City, not want to get out.

Terrence Robinson, Brisas del Mar resident, purchased a unit in 2002 at market value without notice from the real estate agent that the property was considered affordable. He described lost

opportunities to purchase properties in other areas, and discovering two years after purchase that his property was considered affordable. He requested that Council allow more time to investigate the issue, discussed how property taxes are paid according to purchase price, and requested that Council meet with Brisas del Mar owners.

Councilmember Carchio questioned if Mr. Robinson's real estate agent disclosed his unit's affordability status. Mr. Robinson indicated that the real estate agent identified other units as affordable, but not his own.

Robert Johnson, Cape Ann resident, discussed the value of the law and voiced concerns about the Inclusionary Housing Program being put into the developer's hands. He stated that the resale price formula was never disclosed within the contract, and suggested that Council void the program for residents who did not agree to conditions they were not made aware of. He described Cape Ann properties as great homes with terrible restrictions, and his opinion that the law should be equal for everyone.

Connie Ngo, Cape Ann resident, asked Council to consider how they would feel if they lost a financial investment in this program. She urged Council to drop or repair the existing program, and consider ways to recover funds without taking money from the homeowners. She also expressed disappointment with working so hard to earn the property, only to be subjected to restrictions that may result in losing it.

Teddi Alves, resident, commented on Council's previous action to prohibit human signs at their February 2 meeting, and voiced concerns about the Inclusionary Housing Program.

George Mitchell, Cape Ann resident, voiced concerns about the Inclusionary Housing Program. He provided Council a copy of the purchase and sales agreement that he signed in February, 1999 prior to recording of Cape Ann CC&Rs. He described how his purchase was made at full market value, substantiated by appraisals, how he had no contact with the City personnel, and his lack of understanding that the Cape Ann property was affordability. He also described his interpretation of language within the purchase agreement that would allow him to rent his property.

Councilmember Hardy and Mr. Mitchell discussed which of three CC&R documents (Seagate, City, and Cape Ann) Mr. Mitchell was referencing in his discussions.

Councilmember Carchio and Mr. Mitchell discussed how changes to the program evolved, including Mr. Mitchell's receipt of a letter from the City in 2005 informing him of changes to the resale formula, and Mr. Mitchell's attempts to contact City representatives.

Marc Ellis, Attorney representing some of the effected parties who reside in Brisas del Mar, discussed the existing assumptions that market prices will rise, and the reality of property foreclosure. He questioned how the City will handle foreclosure, and urged Council to consider accountability because of the number of property owners who claim to have had no knowledge of affordability restrictions.

Barbara Deckmeyer, Brisas del Mar resident, discussed purchasing her unit in March, 1994 and qualifying for a silent second through the City. She described her conversations with the City Attorney and her real estate agent that indicated the City would release her unit from the program if she paid off the City loan, with interest. She stated that in 2000 the City

would not accept her offer to pay off the loan, but was aware of another owner's offer being accepted. She requested that Council delay program decisions without talking to Brisas del Mar owners first.

Councilmember Green questioned and City Attorney McGrath confirmed that this case was litigated and settled in court in the City's favor.

Christina Griffin, Brisas del Mar homeowner, described her perception of an agreement between her, the City, and her realtor to share equity upon resale of her property. She discussed selling her property twice, and the City's refusal to accept the equity share. She indicated that several different contracts exist, and requested that Council take more time to research all information.

Steve Kim, Cape Ann resident, voiced pride in Cape Ann homeowners who have spoken up for their property rights. He discussed his perception of the road block that exists between the City and Cape Ann homeowners, and voiced concerns that the program will not attract new buyers.

Daniel Lewis, Cape Ann resident, described the purchase of his home in 2004 and his knowledge of affordable program restrictions. He discussed the competitive bid process he experienced, and the three financing options available including fixed, 5 or 7-year adjustable loans. He chose the 7-year adjustable, but voiced concerns that the City has since denied him a 7-year adjustable and directed that he now operate under a 5-year loan program. He described the City's actions as far-reaching, and his hopes of being approved for a new loan term.

Mayor Pro Tem Green and Mr. Lewis discussed reasons why the City directed him to purchase a 5-year adjustable loan, rather than a fixed-rate loan. Mayor Pro Tem Green asked staff to respond. Director Smalewitz stated that the City encourages fixed-rate loans, but discussed changes in the way economics are approached in the real estate market, and essentially how what worked in 2004 may not work now.

With no one else present to speak, Mayor Bohr closed public comments.

Councilmember Hardy discussed program changes that have occurred over time, and the City's attempts to clarify existing program elements governed by the City, and state law. As a former Cape Ann homeowner, she indicated her understanding of adjustable rate loans and explained restrictions that prohibit owners from cashing out equity to avoid the risk of foreclosure. She asked staff to confirm the following points of information: establishing Regional Housing Needs Assessments (RHNA) credit; consistent 30-year affordability period (to commence upon issuance of a Certificate of Occupancy); posting consistent program information on the City website; facilitate informative connection between sellers, buyers, and real estate agents; initiate workshops for three prominent developments (Brisas del Mar, Cape Ann, Promenade); and, keeping all affected homeowners informed of any adopted changes.

Councilmember Hardy provided support for claims by Cape Ann owners that the developer misrepresented the program. Discussion ensued regarding recording of covenants and what information the City has on file to support educating first phase buyers on affordable restrictions. Councilmember Hardy recommended that the in-lieu fee apply to projects with 16 units, rather than 30 as recommended by staff.

Councilmember Hardy questioned staff's knowledge of any non-qualified buyer employed by John Laing homes. City Attorney McGrath indicated no such knowledge. Discussion ensued on allowable gift limits for down payment, and Councilmember Hardy recommended \$20,000 (or \$10,000 per parent). Discussion ensued regarding assisting owners with paperwork to reassess their property value.

Councilmember Coerper and staff discussed the number of foreclosures, and the number of plaintiffs' currently in litigation related to the affordability program.

Councilmember Hansen and Director Smalewitz discussed proposed changes to the equity share cash out methodology, how agreements subordinate the loan, how cash outs can jeopardize a unit's affordability status, and the City's obligation to protect its fiduciary standing. Councilmember Hansen stated the City should consider allowing a buyer to recoup a down payment.

Councilmember Hansen refuted statements about Council treating people as numbers for RHNA credit, and although he agrees that program restrictions have been inadequately translated, they are clearly present. He also concurred with Councilmember Hardy in recommending that the City construct a database to prequalify buyers.

Discussion ensued on what can be experienced by the City and lending institutions when an affordable unit enters foreclosure.

Councilmember Hansen provided general support for the proposed adjustments recommended by staff, but disagreed with the resale formula, reimbursements for home repairs and the gift limit.

Mayor Pro Tem Green, Housing Manager Sidney Stone and Director Smalewitz discussed allowing cash outs for non-subordinated agreements, residents who purchased property at a market rate but are willing to sell at an affordable rate, and the probability that realtors and developers failed to disclose affordable restrictions to perspective buyers.

Councilmember Carchio expressed disappointment with real estate agents and developer representatives who failed to disclose program information, the City's website not accommodating residents who need assistance, and homeowners in the Brisas del Mar development that were misled. He stated his opinion that the proposed modifications will not help current owners and expressed concerns related to the cash out provision. He stated that he hopes to work out details without additional litigation, and his opinion that ownership be removed from the City's affordable housing program.

Councilmember Dwyer and City Attorney McGrath discussed issues related to Brisas del Mar, including the difficulty in maintaining affordable housing numbers. City Attorney McGrath indicated that a number of statements made during public comments are accurate, and that Council is scheduled to discuss the matter during Closed Session on March 2. Councilmember Dwyer expressed support for separating discussion on Brisas del Mar due to the unique problems identified.

Councilmember Dwyer stated support for selling affordable units at full market value upon death of the owner, and expressed concerns with the cash out methodology. He explained his perception that the program only allows purchasers to experience the down market, and not

realize up market conditions. He recommended formulating a new down payment program, stated that RHNA credit is to be strived for and is not a rule, and that RHNA does not mandate for-sale units. He stated the program must be improved, and recommended that the City return in 60 days with consideration of removing affordable homeownership.

Mayor Pro Tem Green, Director Smalewitz and Councilmember Coerper discussed the City's housing stock in relation to RHNA numbers. Councilmember Coerper explained decisions made by Southern California Council of Government (SCAG) board members related to RHNA requirements, and explained the City's obligation to provide 270 affordable units.

Mayor Pro Tem Green expressed pride in the City's efforts to meet affordable housing requirements and discussed how buyers who pay an affordable price must sell at an affordable price in order for the program to function appropriately. She and Director Smalewitz discussed the City's ability to prequalify buyers, how lending institutions determine underwriting standards, and the funding facilitating the activity.

Mayor Bohr questioned Council's consensus for direction, including whether or not adopted changes apply on a go forward basis, are retroactive, and how they affect those currently in litigation. Discussion ensued regarding the legal ramifications of retroactive application of program modifications. City Attorney McGrath explained that the City would be obligated to absorb all attorney fees, and options related to stipulating a grandfather clause or waiver of fees.

Councilmember Hardy stressed the importance of meeting RHNA requirements, discussing state action to collect monies from cities who do not meet RHNA mandates. She stated her intent to move the proposed changes to the Inclusionary Housing Program and presented within the PowerPoint, and also recommended eliminating the gift limit that contributes to a down payment, the cash out methodology to indicate 80 percent of total equity, and allow an in-lieu fee for projects under 16 units.

Mayor Bohr suggested that the PowerPoint proposal return to Council with suggested modifications. Discussion ensued on differences between cash out and contingency, and changing the cash out policy to 80% of total equity (with 20% down payment), or 90% of total equity (with 10% down payment).

Councilmember Dwyer reiterated that RHNA credit can be achieved through rental units, and does not require ownership housing. Councilmember Hansen agreed, and discussed reasons to support the City migrating away from ownership units. He also stated his opposition to Councilmember Hardy's modification related to in-lieu fees applying to projects with 16 units or less.

Deputy City Administrator Bob Hall recommended that the policy and ordinance be acted on separately.

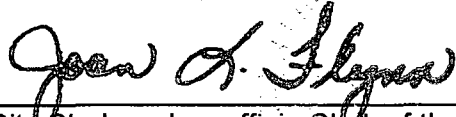
Mayor Pro Tem Green and Consultant Head discussed fees and procedural actions associated with changing the current policy by phasing out ownership units. Councilmember Hardy voiced concerns with banning ownership given that current projects like Pacific City are in process. She also commented on the developers from Red Oak and Bella Terra who currently have rental units in their housing plan, and who hope to convert to condominiums ownership at some point in the future.

A motion was made by Hardy, second Coerper to direct staff to return to Council with proposed changes identified in the Inclusionary Housing Ordinance and Policies and Procedures PowerPoint presentations submitted via late communication, and include the following amendments: eliminate gift limit that contributes to down payment, modify cash out limit to 80% of total equity (with 20% down payment), or 90% of total equity (with 10% down payment), in-lieu fee for projects less than 16 units versus recommendation of 30, resale formula rolled every quarter (3 months); maintain a database of prospective/qualified buyers; research cost and feasibility of mortgage insurance for buying the property out of the program upon the death of the owner(s); and, grandfather covenants. The motion carried by the following roll call vote:

AYES: Carchio, Dwyer, Green, Bohr, Coerper, Hardy, and Hansen
NOES: None

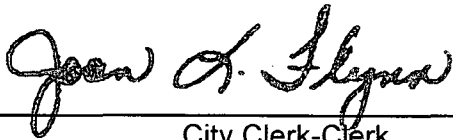
COUNCILMEMBER COMMENTS (Not Agendized) - None.

ADJOURNMENT - Council/Agency adjourned at 9:21 PM to the next regularly scheduled meeting on Tuesday, February 17, 2009, at 4:00 PM which will be a Centennial ceremonial event at the Veteran's Memorial at City Hall, Civic Center, 2000 Main Street, Huntington Beach, California.



City Clerk and ex-officio Clerk of the City
Council of the City of Huntington Beach
and Clerk of the Redevelopment Agency
of the City of Huntington Beach, California

ATTEST:



City Clerk-Clerk



Mayor-Chair